

## CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 206

**Citations Affected:** IC 8-1.

**Synopsis:** Energy facilities. Proposed conference committee report to ESB 206. Amends the definition of "clean coal technology" in various statutes. Defines the term as a technology used at an electric or a steam generating facility to reduce carbon, sulfur, mercury, or nitrogen based pollutants or particulate matter emissions that are regulated, or reasonably anticipated by the utility regulatory commission (IURC) to be regulated, by the federal government, the state, or a political subdivision of the state. (The current definition includes only technologies that reduce sulfur or nitrogen emissions.) Requires the IURC, upon a petition from an energy utility that uses coal or natural gas at an existing generating plant to generate electricity or steam and after a hearing, to approve implementation of certain projects to reduce air emissions of carbon, sulfur, mercury, or nitrogen based pollutants or emissions of particulate matter. Requires the IURC to provide financial incentives, including cost recovery, for implementation of regulated air emissions projects. Requires the IURC, upon the request of the county executives of three or more counties that are located in an electric utility's service area, to study the feasibility of establishing a regional public power authority to: (1) acquire the assets of an electric utility providing retail electric service on April 1, 2007, in specified counties in Indiana; (2) own and operate the assets acquired; and (3) act as a nonprofit utility to provide retail electric service to customers within the participating units. Requires the commission to report its findings not later than December 31, 2007, to: (1) the regulatory flexibility committee; (2) the legislative council; and (3) the county executive of each county in the electric utility's service area on April 1, 2007. Authorizes the regulatory flexibility committee to recommend any legislation necessary to establish a regional public power authority in Indiana. Makes conforming changes. **(This conference committee report: (1) removes language concerning renewable energy resources; (2) mandates, rather than permits, approval of certain regulated air emissions projects and related financial incentives; (3) removes provisions concerning IURC jurisdiction over territorial disputes between water utilities; and (4) makes technical corrections.)**

**Effective:** Upon passage.

## CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 206 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.1. (a) As used in
- 4 this section, "clean coal technology" means a technology (including
- 5 precombustion treatment of coal):
- 6 (1) that is used at a new or existing electric **or steam** generating
- 7 facility and directly or indirectly reduces **or avoids** airborne
- 8 emissions:
- 9 (A) of:
- 10 (i) **carbon, sulfur, mercury, or nitrogen based pollutants; or**
- 11 (ii) **particulate matter;**
- 12 (B) **that are** associated with the combustion or use of coal;
- 13 and
- 14 (C) **that are regulated, or reasonably anticipated by the**
- 15 **commission to be regulated, by:**
- 16 (i) **the federal government;**
- 17 (ii) **the state;**
- 18 (iii) **a political subdivision of the state; or**
- 19 (iv) **any agency of a unit of government described in**
- 20 **items (i) through (iii); and**
- 21 (2) that either:
- 22 (A) is not in general commercial use at the same or greater

scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tippie.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric **or steam** generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

SECTION 2. IC 8-1-2-6.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in this section:

"Clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon, sulfur, mercury, or nitrogen based pollutants; or**

(ii) **particulate matter;**

(B) **that are** associated with **the** combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(i) **the federal government;**

(ii) **the state;**

(iii) **a political subdivision of the state; or**

(iv) **any agency of a unit of government described in items (i) through (iii); and**

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of

January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

"Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tippie.

"Qualified pollution control property" means an air pollution control device on a coal burning electric **or steam** generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission, that meets applicable state or federal requirements, and that is designed to accommodate the burning of coal from the geological formation known as the Illinois Basin.

"Utility" refers to any electric **or steam** generating utility allowed by law to earn a return on its investment.

(b) Upon the request of a utility that began construction after October 1, 1985, and before March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction, but only if at the time of the application and thereafter:

- (1) the facility burns only Indiana coal as its primary fuel source once the air pollution control device is fully operational; or
- (2) the utility can prove to the commission that the utility is justified because of economic considerations or governmental requirements in utilizing some non-Indiana coal.

(c) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 3. IC 8-1-2-6.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.7. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

- (1) that is used in a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon, sulfur, mercury, or nitrogen based pollutants; or**

(ii) **particulate matter;**

(B) **that are** associated with the combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(i) **the federal government;**

(ii) **the state;**

(iii) **a political subdivision of the state; or**

(iv) **any agency of a unit of government described in items (i) through (iii); and**

- (2) that either:

(A) is not in general commercial use at the same or greater

scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) The commission shall allow a public or municipally owned electric **or steam** utility that incorporates clean coal technology to depreciate that technology over a period of not less than ten (10) years or the useful economic life of the technology, whichever is less and not more than twenty (20) years if it finds that the facility where the clean coal technology is employed:

(1) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(2) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

SECTION 4. IC 8-1-2-6.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.8. (a) This section applies to a utility that begins construction of qualified pollution control property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon**, sulfur, mercury, or nitrogen oxides;

(ii) **particulate matter**; or

(iii) other ~~regulated~~ air emissions;

(B) **that are** associated with the combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(i) **the federal government;**

(ii) **the state;**

(iii) **a political subdivision of the state; or**

(iv) **any agency of a unit of government described in items (i) through (iii); and**

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "qualified pollution control property" means an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal

1 technology that has been approved for use by the commission and that  
2 meets applicable state or federal requirements.

3 (d) As used in this section, "utility" refers to any energy generating  
4 utility allowed by law to earn a return on its investment.

5 (e) Upon the request of a utility that begins construction after March  
6 31, 2002, of qualified pollution control property that is to be used and  
7 useful for the public convenience, the commission shall for ratemaking  
8 purposes add to the value of that utility's property the value of the  
9 qualified pollution control property under construction.

10 (f) The commission shall adopt rules under IC 4-22-2 to implement  
11 this section.

12 SECTION 5. IC 8-1-2-6.9 IS ADDED TO THE INDIANA CODE  
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
14 UPON PASSAGE]: **Sec. 6.9. (a) As used in this section, "existing  
15 electric generating facility" means a facility:**

16 (1) other than a new energy generating facility (as defined in  
17 IC 8-1-8.8-8);

18 (2) that is used to generate electricity or steam;

19 (3) that is associated with the combustion of coal or natural  
20 gas; and

21 (4) that commenced commercial operation not later than May  
22 1, 2007.

23 (b) As used in this section, "regulated air emissions" means air  
24 emissions:

25 (1) from an electric generating facility;

26 (2) that are:

27 (A) carbon, sulfur, mercury, or nitrogen based pollutants;  
28 or

29 (B) particulate matter; and

30 (3) that are regulated, or reasonably anticipated by the  
31 commission to be regulated, by:

32 (A) the federal government;

33 (B) the state;

34 (C) a political subdivision of the state; or

35 (D) any agency of a unit of government described in  
36 clauses (A) through (C).

37 (c) As used in this section, "regulated air emissions project"  
38 means a project designed to reduce or avoid regulated air  
39 emissions from an existing electric generating facility. The term  
40 does not include projects that provide offset programs, such as  
41 agricultural and forestry activities.

42 (d) An energy utility (as defined in IC 8-1-2.5-2) may petition  
43 the commission for approval of the construction, installation, and  
44 operation of a regulated air emissions project. If the commission  
45 finds, after notice and hearing, the proposed regulated air  
46 emissions project to be reasonable and necessary, the commission  
47 shall approve the project and provide the following incentives:

48 (1) The timely recovery of costs associated with the regulated  
49 air emissions project, including capital, operation,  
50 maintenance, depreciation, tax, and financing costs incurred  
51 during the construction and operation of the project.

(2) The recovery of costs associated with:

(A) the purchase of emissions allowances; or

(B) the payment of emissions taxes;

arising from compliance with air emissions regulations.

(e) In addition to the incentives described in subsection (d), the commission may provide any other financial incentives the commission considers appropriate.

SECTION 6. IC 8-1-8.7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) carbon, sulfur, mercury, or nitrogen based pollutants; or

(ii) particulate matter;

(B) that are associated with the combustion or use of coal; and

(C) that are regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

SECTION 7. IC 8-1-8.7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (c), a public utility may not use clean coal technology at a new or existing electric generating facility without first applying for and obtaining from the commission a certificate that states that public convenience and necessity will be served by the use of clean coal technology.

(b) The commission shall issue a certificate of public convenience and necessity under subsection (a) if the commission finds that a clean coal technology project offers substantial potential of reducing ~~sulfur or nitrogen based~~ pollutants **described in section 1(1) of this chapter** in a more efficient manner than conventional technologies in general use as of January 1, 1989. For purposes of this chapter, a project that the United States Department of Energy has selected for funding under its Innovative Clean Coal Technology program and is finally approved for funding after December 31, 1988, is not considered a conventional technology in general use as of January 1, 1989. When determining whether to grant a certificate under this section, the commission shall

examine the following factors:

- (1) The costs for constructing, implementing, and using clean coal technology compared to the costs for conventional emission reduction facilities.
- (2) Whether a clean coal technology project will also extend the useful life of an existing electric generating facility and the value of that extension.
- (3) The potential reduction of ~~sulfur and nitrogen based~~ pollutants **described in section 1(1) of this chapter that can be** achieved by the proposed clean coal technology system.
- (4) The reduction of ~~sulfur nitrogen based~~ pollutants **described in section 1(1) of this chapter** that can be achieved by conventional pollution control equipment.
- (5) Federal ~~sulfur and nitrogen based~~ pollutant emission standards.
- (6) The likelihood of success of the proposed project.
- (7) The cost and feasibility of the retirement of an existing electric generating facility.
- (8) The dispatching priority for the facility utilizing clean coal technology, considering direct fuel costs, revenues and expenses of the utility, and environmental factors associated with byproducts resulting from the utilization of the clean coal technology.
- (9) Any other factors the commission considers relevant, including whether the construction, implementation, and use of clean coal technology is in the public's interest.

(c) A public utility is not required to obtain a certificate under this chapter for a clean coal technology project that constitutes a research and development project that may be expensed under IC 8-1-2-6.1.

SECTION 8. IC 8-1-8.8-3, AS AMENDED BY HEA 1722-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

- (1) that is used in a new or existing energy **or steam** production or generating facility and directly or indirectly reduces **or avoids** airborne emissions:
  - (A) of:
    - (i) **carbon**, sulfur, mercury, or nitrogen oxides;
    - (ii) **particulate matter**; or
    - (iii) other ~~regulated~~ air emissions;
  - (B) **that are** associated with the combustion or use of coal; and
  - (C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**
    - (i) the federal government;
    - (ii) the state;
    - (iii) a political subdivision of the state; or
    - (iv) any agency of a unit of government described in items (i) through (iii); and
- (2) that either:



(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding or loan guaranty under an Innovative Clean Coal Technology or loan guaranty program under the Energy Policy Act of 2005, or any successor program, and is finally approved for such funding or loan guaranty on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

**SECTION 9. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

**(b) As used in this SECTION, "electric utility" means a public utility (as defined in IC 8-1-2-1(a)) that:**

**(1) provides retail electric service to:**

**(A) more than four hundred thousand (400,000); but**

**(B) less than five hundred thousand (500,000);**

**retail electric customers in Indiana on April 1, 2007; and**

**(2) has a service area that includes, among other counties, each of the counties described in IC 36-7-7.6-1.**

**(c) As used in this SECTION, "electric utility holding company" means a corporation, company, partnership, or limited liability company that owns an electric utility.**

**(d) As used in this SECTION, "regional public power authority" means a multicounty public power authority established to:**

**(1) acquire the generation, transmission, and distribution assets of an electric utility or an electric utility holding company;**

**(2) own and operate the assets described in subdivision (1); and**

**(3) act as a nonprofit utility to provide retail electric service to residential, commercial, industrial, and governmental customers within the participating units.**

**(e) Upon the request of the county executives of three (3) or more counties that are located in an electric utility's service area, the commission shall study the feasibility of establishing a regional public power authority. The study required by this subsection must include the following:**

**(1) An examination of the need to:**

**(A) enact new state statutes or regulations; or**

**(B) amend existing state statutes or regulations;**

**to permit the establishment of a regional public power authority.**

**(2) A valuation of the electric utility's generation, transmission, and distribution assets to be acquired by the regional public power authority.**

**(3) A study of:**

**(A) existing and potential funding sources or other**

- 1 mechanisms, including the use of eminent domain,
- 2 available to the regional public power authority to acquire
- 3 the assets described in subdivision (2); and
- 4 (B) the method for determining each participating unit's
- 5 respective:
- 6 (i) contribution toward the acquisition of the assets; and
- 7 (ii) ownership interest in the assets acquired.
- 8 (4) A study of similarly sized public power authorities
- 9 operating in the United States, including information on the
- 10 assets, expenses, operations, management, and customer bases
- 11 of the authorities, to the extent the information is available.
- 12 (5) A cost benefit analysis of establishing a regional public
- 13 power authority.
- 14 (6) A determination of whether the establishment of a regional
- 15 public power authority is in the public interest.
- 16 (7) An examination of any other issues concerning the
- 17 establishment of a regional public power authority that the
- 18 commission considers relevant or necessary for study.
- 19 (f) As necessary to conduct the study required by subsection (e),
- 20 the commission may:
- 21 (1) make use of the commission's existing resources and
- 22 technical staff;
- 23 (2) employ or consult with outside analysts, engineers, experts,
- 24 or other professionals; and
- 25 (3) consult with other:
- 26 (A) public power authorities operating in the United
- 27 States; or
- 28 (B) state regulatory commissions that:
- 29 (i) regulate public power authorities; or
- 30 (ii) have conducted similar studies.
- 31 (g) Not later than December 31, 2007, the commission shall
- 32 provide a report to the following on the commission's findings from
- 33 the study conducted under subsection (e):
- 34 (1) The regulatory flexibility committee established by
- 35 IC 8-1-2.6-4. The report provided to the regulatory flexibility
- 36 committee under this subsection must be separate from the
- 37 commission's annual report to the regulatory flexibility
- 38 committee under IC 8-1-2.5-9(b).
- 39 (2) The legislative council. The report provided to the
- 40 legislative council under this subsection must be in an
- 41 electronic format under IC 5-14-6.
- 42 (3) The county executive of each county in the electric utility's
- 43 service area on April 1, 2007.
- 44 (h) The report required by subsection (g) must contain the
- 45 following:
- 46 (1) A summary of the commission's findings with respect to
- 47 each issue set forth in subsection (e).
- 48 (2) Recommendations to the regulatory flexibility committee
- 49 on any legislation needed to establish a regional public power
- 50 authority.
- 51 (3) Any other findings or recommendations that the

1           commission considers relevant or useful to the entities  
2           described in subsection (g).

3           (i) Before the commission submits its report under subsection  
4           (g), any entity described in subsection (g) may require the  
5           commission to provide one (1) or more status reports on the  
6           commission's study under subsection (e). A status report provided  
7           to the legislative council under this subsection must be in an  
8           electronic format under IC 5-14-6.

9           (j) The regulatory flexibility committee:

10           (1) shall review the analyses and recommendations of the  
11           commission contained in:

12                (A) any status reports provided by the commission under  
13                subsection (i); and

14                (B) the commission's final report provided under  
15                subsection (g); and

16           (2) may recommend to the general assembly any legislation  
17           that is necessary to establish a regional public power  
18           authority in Indiana, if the regulatory flexibility committee  
19           determines that the establishment of a regional public power  
20           authority is in the public interest.

21           (k) This SECTION does not empower the commission or any  
22           entity described in subsection (g) to require an electric utility to  
23           disclose confidential and proprietary business plans and other  
24           confidential information without adequate protection of the  
25           information. The commission and all entities described in  
26           subsection (g) shall exercise all necessary caution to avoid  
27           disclosure of confidential information supplied under this  
28           SECTION.

29           SECTION 10. An emergency is declared for this act.

          (Reference is to ESB 206 as reprinted April 10, 2007.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 206**

**S**igned by:

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Senator Gard  
Chairperson

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Representative Crooks

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Senator Rogers

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Representative Lutz J

**Senate Conferees**

**House Conferees**